In the present case the intestate died in October, 1937. Letters of administration were granted in October, 1938, and the present application was made in October, 1939. There is no reason to suppose that the administrator did not consider the offer of $400 per acre which he received on the 20th October, 1939. to be a fair one, but he only expressed his own opinion on the value of the property, which is rubber land within three miles of Ipoh, and possibly with a potential building value. The Court was not therefore assisted with an independent valuation.

Before the application was heard two of the beneficiaries, the present applicants, brought to the notice of the Court that their solicitor had received an offer of $14,000 as against the sum of $12,777.50, which was the price in the conditional verbal contract for which the Court's approval was asked. The learned Judge approved the conditional contract, being satisfied that at the time the offer was made the price was a reasonable one. As I have said above, I do not consider that that is the correct line of approach, the first duty of the Court being to protect the interests of the estate.

The learned Judge seems also to have thought that the effect of the later offer may have been to induce the original purchaser to increase his offer. If so, I cannot see that that is any objection. In analogous applications in Singapore the original purchaser frequently increases his offer, and the precedent books contain forms of order approving conditional contracts so varied (*see Seton* Vol. I, p. 326).

On the appeal Mr. Seenivasagam for the appellants asked that the sale should be by public auction at a reserve of $14,000, and he undertook on behalf of another client to make a bid of, at all events, $14,000 when the auction took place. In these circumstances I feel no doubt that it is the duty of the Court to make the order for which the applicants have asked. The appeal therefore should be allowed and the order of the Court below set aside. As, however, the administrator has not acted unreasonably in supporting a contract which he made good in faith with the prospective purchaser, the costs of both parties should be taxed as between solicitor and client and paid out of the estate

The deposit should be repaid to the appellants.

Appeal allowed. Order that property be sold by public auction subject to a reserve price.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

April 13, 1940.

THEIVANAI ACHI (f.)

vs.

M. M. KATHIRASEN CHETTIAR, M. R. A. L. ALAGAPPA CHETTIAR, P. V. D. P. R. R. M. P. R. PERIAKARUPPAN CHETTIAR.

[SELANGOR CIVIL SUIT No. 68 of 1939]

Limitation Enactment (Cap. 18), section 16—Article 86—Dissolution of partnership by death—Lapse of time before appointment of representative—Limitation of suit for account—Computation of time.

The plaintiff sued for partnership accounts as administratrix of P. R. M. N. Narayan Chettiar, deceased. In April, 1927, deceased had entered into the partnership with the three defendants. He died intestate on the 29th February, 1932, and letters of administration were granted to the plaintiff on the 22nd August, 1938. For the defence it was alleged that the partnership was dissolved in 1932 by the death of the deceased, and therefore the suit was barred under Article 86 of the Limitation Enactment.

Held [following Cussen, J., in **Abdul Majeed v. Official Administrator**(1)] that in the application of section 16 (i) of the Limitation Enactment the test is—"Could the deceased, if alive have brought the suit? If the answer is yes, the section applies; if the answer is no, it does not apply".

Held further, that the right to demand accounts of partnership is inherent in a partner. He can always exercise such right and sue for accounts whether or not he also seeks dissolution. Such right accrues from day to day and descends to the personal representative of a deceased partner. The period elapsing between the date of death and the date of appointment of a representative therefore does not count by reason of section 16 (i) of the Limitation Enactment.

Case referred to:—

(1) *Abdul Majeed v. Official Administrator* (1938), F.M.S.L.R. 242; 8 M.L.J. 267.

PARTNERSHIP ACTION.

Hum Yam Teh for plaintiff.

F. G. Charlesworth for defendants.

Gordon-Smith, J.—At the conclusion of the hearing of this suit I gave a verbal decision in favour of the plaintiff, allowing her claim and the case was then followed by Civil Suit 78/39 which was by the same plaintiff and against the Firm P.R.M.S.T. and not against the three individual partners as in the earlier case. I reserved judgment in this second case and as both suits are somewhat inter-related I have thought it desirable to record in writing the reasons for my decision in the earlier case in addition.

In this case, i.e. C.S. 68/39, the allegations in the first four paragraphs of the plaint were all admitted severally by the three defendants who each filed separate but identical defences. The 5th paragraph of the plaint averred that the first defendant who was managing the partnership although requested to render partnership accounts had failed to do so. The prayer was for such accounts and winding up of the partnership.

So far as the defences were concerned the only material issue was whether the plaintiff's claim was barred by limitation and the Limitation Enactment was specifically pleaded.

The plaintiff is the administratrix of the estate of P.R.M.N. Narayan Chettiar (hereinafter referred to as "the deceased"), and sued as such.

The deceased had, in April, 1927, entered into partnership with the three defendants, the terms of such partnership being set out in a formal Tamil document, a copy of which was attached to the plaint. It is clear that it was contemplated that the firm or business of P.R.M.S.T. thereby established, should subsist for more than six years.

The deceased died in India intestate on the 29th February, 1932, and on the 22nd August, 1938, letters of administration were granted locally to the plaintiff, his widow.

Although the defences alleged that the defendants were always ready and willing to go into accounts with the plaintiff and that the suit was unnecessary, yet her right to such accounts is denied and limitation pleaded. The particular Article on which this plea was founded is Article 86 of the Limitation Enactment (Cap. 18) which reads as follows:

> "86. For an account and a share of the profits of a dissolved partnership"

the period being three years from the date of dissolution.

It was not disputed that the partnership was dissolved on the 29th February, 1932, by reason of the death of the deceased, a member of the partnership firm, *vide* Contract Enactment (Cap. 52), section 253 (j).

The case for the plaintiff in this respect was based on section 16 (i) of the Limitation Enactment which reads as follows:

> "16. (i) When a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application".

The case for the defence and the interpretation of this section was founded on the decision of Cussen, J., in *Abdul Majeed v. Official Administrator, F.M.S.*[1]. In that case the prayers were mainly for declarations in respect of immovable property acquired on behalf of a partnership which was dissolved by death of a partner in 1915 but Cussen, J., considered this section and in doing so stated as follows:

> "The difficulty, where there is such, in the application of section 16 (i) to any particular case does not lie in and is not to be solved only by the question as to whether the cause of action arises on or after death, on which there has been much argument before me, but it also lies in the simple question—could the deceased, if alive, have brought the suit? If the answer is yes, the section applies; if the answer is no, it does not apply".

The fact that on the prayers before him and on the facts of the case before him, the learned Judge answered the question in the negative does not seem to me material, and I asked myself the same question and had no hesitation in answering it in the affirmative.

The right to demand accounts of a partnership of which he is a member, is inherent in a partner and he can always, subject to any provisions to the contrary in the terms of the partnership, exercise such right and demand, and, if necessary, sue for accounts, whether or not he seeks dissolution in addition. Such right is existent and accrues from day to day as long as he is a partner and it descends to the personal representative of a deceased partner and subsists for a period of three years as from the date of the appointment of such personal representative, the period which may have elapsed between the date of death and date of such appointment ceasing to count by reason of section 16 (i).

For these reasons I allowed the plaintiff's claim.

Order for accounts.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

April 13, 1940.

THEIVANAI ACHI vs. P.R.M.S.T. FIRM.

[SELANGOR CIVIL SUIT No. 78 of 1939]

Partnership—Suit by partner against firm—Accounts ordered in previous suit—Whether present suit maintainable.